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# Security Council

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## Letter dated 29 August 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/376).

The Counter-Terrorism Committee has received the attached supplementary report from Austria, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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## Annex

### Note verbale dated 2 August 2002 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Austria to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit herewith Austria's supplementary report on the implementation of Security Council resolution 1373 (2001) (see enclosure).

**Enclosure**

## Additional information by Austria to the Committee established under article 6 of resolution 1373 (2001) adopted by the Security Council at its 4385th meeting on 28 September 2001

In its letter dated 22 March 2002 the Chairman of the Counter-Terrorism Committee established under article 6 of United Nations Security Council Resolution 1373 (2001) asked Austria to submit some further information on the steps taken to implement the Resolution. In addition to the clarifications already given by the Austrian representative at the Subcommittee Meeting on 12 February 2002, Austria is pleased to provide the CTC with the following additional information.*

**Initial observation:**

UNSC resolution 1373 (2001) in operative paragraph 3 (d) calls upon all States to become parties to the relevant conventions and protocols relating to terrorism and explicitly mentions the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999. Austria has deposited its instrument of ratification to this important legal instrument in the fight against terrorism on 15 April 2002.

**Sub-paragraph 1 (a):**

The report makes clear that Austria has no provisions criminalising terrorist acts as such in its current law. Does Austria intend to introduce a specific law or make amendments to existing laws so as to criminalise terrorism?

Austrian legislation provides for the criminalisation of acts covered by relevant international treaties on terrorism as general offence irrespective of whether they have been committed with terrorist motivation or without (for instance murder, hijacking, endangering by explosives and other activities).

A Government bill to broaden the scope of the Penal Code is currently being discussed in the Austrian Parliament. This bill includes crimes such as financing of terrorism (as set out in the International Convention for the Suppression of the Financing of Terrorism) and terrorist group (as defined in the EU Draft Framework Decision on Combating Terrorism). A general qualification entitled "terrorist crimes" will make existing penalties for certain offences more severe in the circumstances foreseen by the EU Draft Framework Decision on Combating Terrorism. The bill should enter into force on 1 October 2002.

Are natural or legal persons other than banks (e.g. attorneys, notaries and other intermediaries) required to report suspicious transactions to the public authorities, and if so, what penalties apply to persons who omit to report either wilfully or by negligence?

This issue has been addressed by an amendment of the EU-Money-laundering Directive. EU-Member States are obliged to implement the EU Directive by summer 2003. Preparations to

* The annexes are on file with the Secretariat and are available for consultation.

implement on the national level all obligations of this directive have already been initiated but proposals have not yet been finalised.

**Sub-paragraph 1 (b):**

Please outline how existing legal provisions meet the requirement of this sub-paragraph to criminalise the collection of funds for terrorist acts.

Under certain circumstances, the intentional financing of a specific terrorist act would be considered as an act of assistance (participation) to the terrorist act itself (Section 12 of the Penal Code in relation with the offence committed, e.g. murder, intentional endangering by explosives, etc.). However, the terrorist act in question would at least have to be attempted in order to make the act of the (financing) participant punishable (Section 15 para. 1 und 2 of the Penal Code). Section 279 of the Penal Code relates to the financing of armed associations. Under certain circumstances, the providing or collecting of money in order to finance the activities of a criminal organisation as defined in Section 278a of the Penal Code would be considered as participation in the criminal organisation as such. In this case, it is not necessary that a specific terrorist act has already been committed or attempted. Certain acts of handling assets that belong to a criminal organisation as defined in Section 278a of the Penal Code, if they are used or destined for financing terrorist acts could fall under Section 278a para 2 of the Penal Code when committed with the knowledge that the assets belong to a criminal organisation.

One of the intentions of the bill to amend the penal law mentioned under sub-paragraph 1 (a) above is to assure that the collection of funds for terrorist acts is criminalised also in cases that would not be covered by the current legislation. Thus, a new criminal offence called "Financing of Terrorism" will be introduced to the penal code (Section 278d).

**Sub-paragraph 1 (c):**

Does Austria have an autonomous legal power to freeze funds apparently intended for terrorist purposes that is not dependent on the specification of a particular State and is exercisable in situations not covered by the relevant EU regulations?

According to Section 33a of the Foreign Exchange Act, the Oesterreichische Nationalbank is - in case of the existence of certain conditions, such as the compliance with international legal obligations or the protection of external interests of the Republic of Austria - explicitly entitled to set-up special restrictions on capital movement ("measures of de-liberalisation") - e.g. the freezing of funds - in form of official announcements. These official announcements are legally regarded - implementing regulations. However, in doing so, any directly applicable legal provisions of the European Union in this context must not be violated.

Can the requirements of this sub-paragraph to freeze funds, assets and economic resources be effected under the Banking Act, the Foreign Exchange Act and the Penal Code, if the funds etc are not proceeds of crime and do not belong to a criminal organisation?

See the information given above on the official announcements or implementing regulations of the Oesterreichische Nationalbank. For both, the enactment and the cancellation of the official

announcements, a previous consent by the Federal Government is obligatory. In case of imminent danger, the consent of the Federal Chancellor is sufficient. It is also possible that the Oesterreichische Nationalbank is requested by the Federal Government to enact such official announcements.

Additionally, Section 78, para. 7 of the Banking Act has to be mentioned in this context. To the extent necessary in fulfilment of decisions of the United Nations binding under public international law, the Federal Government is - by common accord with the Executive Committee of the National Council (first chamber of the Austrian parliament) - empowered by law to prohibit by way of regulation the disposition over accounts held with credit institutions.

These accounts have to be

- the property of authorities or other state agencies of a particular state or of companies having their corporate seat in a particular state, or
- the property of companies that are governed by the above mentioned authorities, agencies or companies either financially or by way of organisation, or otherwise economically controlled by these companies.

In addition, Section 144a of the Code of Criminal Procedure provides for the freezing of funds only with respect to proceeds suspected of having been obtained through the commitment of a criminal offence or assets within the disposition of criminal organisation as defined in Section 278a of the Penal Code. However, the bill mentioned under sub-paragraph 1 (a) above will amend the Code of Criminal Procedure to provide for the freezing of assets within the disposition of a terrorist group as defined in a new offence (Section 278b of the Penal Code) as well as the freezing of funds collected for the financing of terrorist acts (Section 278d of the Penal Code).

**Sub-paragraph 1 (d):**

Please elaborate on the provisions of Section 39 of the Banking Act referring to enhanced diligence required to be applied by credit institutions. Are any penalties for non-compliance by the credit institutions included?

Non compliance of Section 39 Banking Act by the credit institution can result in an administrative procedure provided for in Section 70 para 4 Banking Act. If a credit institution violates provisions of the Banking Act (among others), supervisory measures by the Austrian Financial Market Supervisory Authority (FMA) can be taken to re-establish the lawful conditions within an appropriate period. In case of repetition it can result in the loss of the credit institution's licence.

How does the financial tracking system ensure that funds received by bodies such as charities are not diverted from their stated purposes to terrorist activities?

The Ministry of Finance is drafting further amendments to the Banking Act and the Gaming Act. This new legislation will also take fully into account the FATF-special recommendations regarding the financial sector. Money transmitters will be included into the definition of a "bank" and as such these institutions will have to apply all anti-money-laundering-requirements

(customer identification, internal control systems, reporting, etc). The over-the-counter purchase of foreign means of payment (e.g. currency, checks, travellers' letters of credit and payment orders) and over-the-counter sale of foreign currencies and of traveller checks (exchange bureau business) will be re-included in the definition of a credit institution; this means in particular licensing requirements and supervision by the Financial Markets authority (anti-money-laundering-requirements are already applicable to exchange bureaus).

Please provide further information on the progress of implementation of the amended EU money-laundering directive.

EU-Member States are obliged to implement the amended EU-Money-laundering Directive (91/308/EWG) until summer 2003. Preparations to implement all obligations of the directive have already been initiated. At present, the respective amendments to the Austrian law are being drafted by the Ministry of Economic Affairs and Labour (for merchants of high value goods and real estate brokers), the Ministry of Justice (concerning lawyers and auditors) and by the Ministry of Finance (credit and financial institutions, casinos).

What legal provisions apply to the use by persons outside Austria for the purpose of supporting terrorists acts outside Austria, of funds in Austria?

The above-mentioned amendments of the Banking Act together with the new amendments to the Penal Code on terrorist related crimes shall ensure extended control and reporting requirements on possible terrorist financing for credit and financial institutions also for cases referred to in the question above.

**Sub-paragraph 2 (a):**

Please explain whether recruitment in Austria to a terrorist group outside Austria is prohibited under Austrian law.

Currently, support for criminal organisations acting outside Austria is punishable in Austria, if the supportive act has been effected in Austrian territory. The recruitment of members for a criminal organisation can be considered as such a supportive act. (In the future legislation, terrorist groups will be covered explicitly).

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Austria including, in particular:
- the carrying out, within or from Austria, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and
- deceptive activities such as the recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.

The Austrian law enforcement authorities attempt to prevent support in whatever form for terrorist groups or attacks by operational and tactical measures that appear most adequate in this respect, making use of all legal possibilities.

However, it cannot be entirely ruled out that in isolated cases terrorist groups also become active in Austria by skilfully concealing the true purpose of their activities (e.g. fund raising for humanitarian purposes, advertising pilgrimages to Arab countries, etc.).

**Sub-paragraph 2 (b):**

Austria has informed the CTC of its co-operation with intelligence services and EUROPOL. Could Austria please also indicate whether the steps it has taken extend the scope of this co-operation to other countries generally.

The bilateral, multilateral and international co-operation in the field of combating terrorism both with various law enforcement authorities and intelligence and security services, has been constantly extended and enhanced during the past years. In addition and as a consequence of the attacks of 11 September 2001 in the United States, this co-operation with other countries has been further intensified. Austria tries to use all avenues of co-operation in the best possible manner.

**Sub-paragraph 2 (c):**

This sub-paragraph requires countries to deny safe haven to those who support or commit terrorist acts. Please could Austria outline the safeguards in its systems that ensure compliance with this sub-paragraph.

One important safeguard is the fact that visas may be exclusively issued by Austrian Consulates abroad and not within Austria. The only exception to this rule are border visas, which are in any case granted to a very limited extent and in absolutely exceptional cases in conformity with the Schengen-Acquis. Residence permits are always granted only inside Austria.

With regard to the 21 countries as mentioned in Austria's initial report, instructions have been given to make inquiries to the central authorities in all cases.

As a first measure, each application for a visa or a residence permit is checked against the Schengen Information System (SIS), which contains the Wanted Persons Index and Wanted Persons Data of 15 European countries.

Upon receipt of such an inquiry, all national databases and Wanted Persons Indices are queried and the law enforcement authorities investigate the applicant. In addition, certain countries enter consultations with the Schengen partners.

All visas granted must be in a uniform Schengen-format. Only in case of exceptions as laid down in the Schengen Convention, visas valid for Austria only are issued, and in such cases the Schengen partners have to be notified. The Schengen partners are also notified of border visas. The information exchange is done electronically.

**Sub-paragraph 2 (f):**

Would the existing arrangements for mutual assistance allow Austria to extend co-operation to countries other than those mentioned in the reply to this sub-paragraph?

Under Section 3 para. 4 of the Austrian Act on Extradition and Mutual Assistance in Criminal Matters, Austria is in a position to grant assistance to any State, even in the absence of a treaty, on the basis of reciprocity. Consequently, Austria is in a position to extend co-operation to countries other than those mentioned in the original reply to sub-paragraph 2 (f) on that basis.

How long does it take on average to implement a request for judicial assistance in simple matters (e.g. a request for information) and complex ones (e.g. banking investigations, questioning)?

It takes approximately 2 months to execute a request for judicial assistance in simple matters and 3 to 6 months to execute a request in complex matters.

**Sub-paragraph 2 (g):**

The report refers to nationals of 21 countries and holders of travel documents issued by those countries who will be thoroughly checked upon entry. Could Austria please indicate by what criteria these countries have been selected? What legislation or procedures exist for checking documents and deciding on applications for visas and residence permits from nationals of countries other than the 21 countries referred to?

The 21 states in question were selected on the basis of a threat assessment made by the law enforcement authorities. While there is a general obligation for travel documents of these countries to send queries to the central authorities, applications by nationals of other countries (i.e. non-EU-states) are checked in accordance with the provisions and procedures laid down in the Schengen Convention.

In other words, the consulates and in case of residence permits the Austrian authorities are required to search the applicants' data against the nationa! Wanted Persons Index, as these files contain cross-references to the SIS-data.

Should the consulates have doubts with regard to the individual concerned or the reasons for travelling, they have to check with the Ministry of the Interior, even if nationals of other countries than the 21 countries are involved, to enable appropriate inquiries in Austria.

Please outline both the security measures in place to prevent the counterfeiting of ID cards and the legislation under which they have been put in place.

The legal basis for the virtually counterfeit-proof ID-cards is a Decree of the Federal Minister of the Interior which amended the 'Decree regarding Form and Contents of Passports and Passport Substitutes' (Federal Law Gazette II No. 6/2002 that has been handed over by the Austrian representative at the Subcommittee Meeting on 12 February 2002 and is again attached to this information).

**Sub-paragraphs 3 (a) and (b):**

Please describe any arrangements for the sharing of operational information on terrorist-related activities.

See reply under sub-paragraph 2 (b).

**Sub-paragraph 3 (c):**

Please provide a list of the relevant bilateral agreements to which Austria is party.

1. Mutual Legal Assistance:

Austria has concluded bilateral treaties with the following countries: Australia, Canada, Monaco, Poland, United States of America, Yugoslavia.

Furthermore, Austria has concluded additional bilateral treaties to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 with the following countries: Czech Republic, Germany, France, Liechtenstein, Hungary, Italy, Israel, Slovakia, Switzerland.

2. Extradition:

Austria has concluded bilateral treaties with the following countries: Australia, Bahamas, Canada, Monaco, United States of America, Yugoslavia.

Furthermore, Austria has concluded additional bilateral treaties to the European Convention on Extradition of 13 December 1957 with the following countries: Czech Republic, Germany, Hungary, Italy, Liechtenstein, Slovakia, Switzerland.

**Sub-paragraph 3 (d):**

Austria has ratified eleven of the twelve of the international conventions and protocols relating to terrorism mentioned in this sub-paragraph. As the practice of enforcing these ratified conventions differs among countries, please outline how Austria gives effect to these conventions and protocols. Are separate enactments required, or are the international instruments given effect to in existing laws?

As stated in the initial observation, Austria has deposited its instrument of ratification for International Convention for the Suppression of the Financing of Terrorism on 15 April 2002 and is thus party to all relevant international conventions and protocols relating to terrorism.

As regards the domestic enforcement, upon ratification of an international treaty, such a treaty is considered to be part of Austrian law once it has entered into force. However, it has to be examined, whether and which of its provisions are self-executing, that means directly applicable by national authorities, and if not to what extent it is necessary to enact specific enabling legislation.

As far as the provisions on extradition and mutual legal assistance contained in the international conventions and protocols relating to terrorism are concerned, no enabling legislation is called for, as Section 1 of the Austrian Act on Extradition and Mutual Assistance in Criminal Matters provides that its provisions only apply in the absence of conflicting rules of applicable international treaty law.

As far as the above mentioned conventions and protocols establish other obligations that do not already exist under Austrian law, in particular the Austrian Penal Code or the Austrian Code of Criminal Procedure, such obligations are normally given effect to by amending existing laws.

**Sub-paragraph 3 (e):**

Have the crimes set forth in the relevant international conventions been included as extraditable offences in the bilateral treaties to which Austria is party?

When concluding bilateral treaties, Austria in general does not favour a list system, but makes extradition subject to the penalty provided for the offence in question under the laws of the requesting and the requested State (at least or more than a year). Consequently, the crimes set forth in the relevant international conventions are considered as extraditable offences.

**Sub-paragraph 3 (g):**

Could Austria please make clear whether requests for extradition of alleged terrorists can be refused on political grounds.

In so far as applicable international conventions have abolished the political offence exception (e.g. Article 1 of the European Convention on the Suppression of Terrorism of 27 January 1977; Article 11 of the International Convention for the Suppression of Terrorist Bombings of 15 December 1997 and Article 14 of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999), requests for extradition can not be refused for political grounds.

In the absence of a bilateral or multilateral treaty, Section 14 of the Austrian Act on Extradition and Mutual Assistance in Criminal Matters applies. Under that provision, requests for extradition can be refused for political grounds, unless the criminal character of the act prevails over the political one. However, as far as terrorist acts are concerned, it is submitted that the criminal character of the act will always prevail over the political one.

**Paragraph 4:**

Has Austria addressed any of the concerns expressed in paragraph 4 of the Resolution relating to money-laundering and narcotics?

In addition to what has already been said in the first report, Austria inter alias also pursues its commitment to support the work of ODCCP through voluntary financial contributions. ODCCP is a world leader in the multidisciplinary combat against crime including trafficking in narcotics, organised crime and money-laundering. Further, Austria underscores the importance of a

comprehensive approach on these types of crime in pertinent current discussions like those within the ad hoc committee for the negotiation of a UN-Convention against Corruption.

**Other matters:**

Could Austria please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

From an organisational perspective, the authorities mentioned are all at federal level. Police and immigration control fall under the competence of the Federal Ministry of the Interior and customs, taxation and financial supervision under the Federal Ministry of Finance. In the context of this report, the following bodies working under these ministeries have to be specially mentioned: Federal Bureau of Criminal Investigation (Bundeskriminalamt) under the Federal Ministry of the Interior and Austrian Financial Market Supervisory Authority (Finanzmarktaufsicht, FMA) under the Federal Ministry of Finance. Further information on the organisation of these two ministries can be obtained from the following web sites: http://ln-inter1.bmi.gv.at and http://www.bmf.gv.at.